

52:34-6

LEGISLATIVE HISTORY CHECKLIST
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(State contracts--McBride)

NJSA: 52:34-6

LAWS OF: 1995 **CHAPTER:** 134

BILL NO: S331

SPONSOR(S): McNamara and others

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** State Government
SENATE: State Government

AMENDED DURING PASSAGE: Yes Amendments during passage
First reprint enacted denoted by superscript
numbers

DATE OF PASSAGE: **ASSEMBLY:** February 6, 1995 Re-enacted 6-19-95
SENATE: March 3, 1995 Re-enacted 5-25-95

DATE OF APPROVAL: June 26, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

[FIRST REPRINT]

SENATE, No. 331

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Senators McNAMARA, McGreevey, Baer, O' Connor,
Martin, Kenny, Assemblymen Kelly and DiGaetano

1 AN ACT requiring certain parties to State contracts to comply
2 with the MacBride principles of nondiscrimination in
3 employment ¹and the United Kingdom's Fair Employment
4 (Northern Ireland) Act of 1989,¹ and supplementing P.L.1954,
5 c.48 (C.52:34-6 et seq.).
6

7 BE IT ENACTED *by the Senate and General Assembly of the*
8 *State of New Jersey:*

9 1. a. Notwithstanding the provisions of any law, rule or
10 regulation to the contrary, whenever a purchase, contract or
11 agreement is to be made, negotiated or awarded after public
12 bidding pursuant to the provisions of P.L.1954, c.48 (C.52:34-6 et
13 seq.) by the Director of the Division of Purchase and Property or
14 the Director of the Division of Building and Construction, as the
15 case may be. ¹[the] or pursuant to R.S.52:32-2, any¹ responsible
16 bidder whose bid would be most advantageous to the State
17 pursuant to section 7 of P.L.1954,c.48 (C.52:34-12) ¹or who is
18 selected pursuant to R.S.52:32-2¹ shall ¹[agree to] certify that¹:

19 1) ¹they¹ have no business operations in Northern Ireland; or
20 2) ¹they will¹ take lawful steps in good faith to conduct any
21 business operations they have in Northern Ireland in accordance
22 with the MacBride principles of nondiscrimination in employment
23 as set forth in section 2 of P.L.1987, c.177 (C.52:18A-89.5)¹, and
24 in conformance with the United Kingdom's Fair Employment
25 (Northern Ireland) Act of 1989,¹ and permit independent
26 monitoring of their compliance with those principles.

27 b. If a bidder who would otherwise be awarded a purchase,
28 contract or agreement does not agree to comply with the
29 provisions of subsection a. of this section and another bidder who
30 has agreed to stipulate to the conditions set forth therein has
31 submitted a bid within five percent of the most advantageous bid
32 for a purchase, contract or agreement to supply goods, services
33 or construction of comparable quality, the contracting entity
34 shall refer such bids to the ¹[administrator of the General
35 Services Administration] Director of the Division of Purchase and
36 Property or the Director of the Division of Building and
37 Construction, as the case may be,¹ who may determine, in
38 accordance with applicable law and rules, that it is in the best
39 interest of the State that the purchase, contract or agreement be
40 awarded to the latter bidder.

41 c. Upon receiving information that a party to a purchase,
42 contract or agreement to supply goods, services or construction is

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate amendments adopted in accordance with Governor's
recommendations May 11, 1995.

1 in violation of the principles required by subsection a. of this
2 section, the contracting agency shall review the information and
3 offer the party an opportunity to respond. If the contracting
4 agency finds that a violation has occurred, it shall take such
5 action as may be appropriate and provided for by law, rule or
6 contract, including, but not limited to, imposing sanctions,
7 seeking compliance, recovering damages, declaring the party in
8 default and seeking debarment or suspension of the party.

9 d. The provisions of this section shall not apply to contracts in
10 which the application of the provisions would jeopardize the
11 receipt of federal funds.

12 For the purposes of this section, a corporation conducts
13 business ¹operations¹ in Northern Ireland if the corporation has
14 ongoing business activities in ¹[that country] Northern Ireland¹
15 and maintains a physical presence therein through the operation
16 of offices, plants, factories, or similar facilities, either directly
17 or indirectly through intermediaries, subsidiaries or affiliated
18 companies over which the corporation maintains effective control.

19 2. This act shall take effect immediately and shall apply to
20 contracts made, negotiated or awarded after the effective date
21 of this act.

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26 **Requires certain parties to certain State contracts to comply**
27 **with MacBride principles.**

SENATE, No. 331
STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Senator McNAMARA

1 AN ACT requiring certain parties to State contracts to comply
2 with the MacBride principles of nondiscrimination in
3 employment and supplementing P.L.1954, c.48 (C.52:34-6 et
4 seq.).

5
6 BE IT ENACTED *by the Senate and General Assembly of the*
7 *State of New Jersey:*

8 1. a. Notwithstanding the provisions of any law, rule or
9 regulation to the contrary, whenever a purchase, contract or
10 agreement is to be made, negotiated or awarded after public
11 bidding pursuant to the provisions of P.L.1954, c.48 (C.52:34-6 et
12 seq.) by the Director of the Division of Purchase and Property or
13 the Director of the Division of Building and Construction, as the
14 case may be, the responsible bidder whose bid would be most
15 advantageous to the State pursuant to section 7 of P.L.1954,c.48
16 (C.52:34-12) shall agree to:

17 1) have no business operations in Northern Ireland; or
18 2) take lawful steps in good faith to conduct any business
19 operations they have in Northern Ireland in accordance with the
20 MacBride principles of nondiscrimination in employment as set
21 forth in section 2 of P.L.1987, c.177 (C.52:18A-89.5) and permit
22 independent monitoring of their compliance with those principles.

23 b. If a bidder who would otherwise be awarded a purchase,
24 contract or agreement does not agree to comply with the
25 provisions of subsection a. of this section and another bidder who
26 has agreed to stipulate to the conditions set forth therein has
27 submitted a bid within five percent of the most advantageous bid
28 for a purchase, contract or agreement to supply goods, services
29 or construction of comparable quality, the contracting entity
30 shall refer such bids to the administrator of the General Services
31 Administration who may determine, in accordance with
32 applicable law and rules, that it is in the best interest of the
33 State that the purchase, contract or agreement be awarded to the
34 latter bidder.

35 c. Upon receiving information that a party to a purchase,
36 contract or agreement to supply goods, services or construction is
37 in violation of the principles required by subsection a. of this
38 section, the contracting agency shall review the information and
39 offer the party an opportunity to respond. If the contracting
40 agency finds that a violation has occurred, it shall take such
41 action as may be appropriate and provided for by law, rule or
42 contract, including, but not limited to, imposing sanctions,
43 seeking compliance, recovering damages, declaring the party in
44 default and seeking debarment or suspension of the party.

1 d. The provisions of this section shall not apply to contracts in
2 which the application of the provisions would jeopardize the
3 receipt of federal funds.

4 For the purposes of this section, a corporation conducts
5 business in Northern Ireland if the corporation has ongoing
6 business activities in that country and maintains a physical
7 presence therein through the operation of offices, plants,
8 factories, or similar facilities, either directly or indirectly
9 through intermediaries, subsidiaries or affiliated companies over
10 which the corporation maintains effective control.

11 2. This act shall take effect immediately and shall apply to
12 contracts made, negotiated or awarded after the effective date
13 of this act.

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STATEMENT

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18 This bill would require the successful bidder on a State
19 contract to agree to have no business operations in Northern
20 Ireland or to conduct any operations the bidder has in that
21 country in accordance with the MacBride principles. These
22 principles establish standards for corporate activity with respect
23 to the recruitment, hiring, assignment, training and promotion of
24 minority employees and the maintenance of workplace
25 conditions. The bill provides that if a successful bidder refuses to
26 comply with these requirements, the contract may instead be
27 awarded to the next qualified bidder who has agreed to stipulate
28 to these conditions and whose bid is within five percent of the
29 successful bid. A party to a State contract who agrees to these
30 conditions and is, thereafter, found not to be in compliance would
31 be subject to sanctions.

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36 Requires certain parties to certain State contracts to comply
37 with MacBride principles.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 331

STATE OF NEW JERSEY

DATED: DECEMBER 12, 1994

The Assembly State Government Committee reports favorably Senate, No. 331.

This bill would require the successful bidder on a State contract to agree either to have no business operations in Northern Ireland, or to conduct any operations the bidder has in that country in accordance with the MacBride principles.

The bill provides that if a successful bidder refuses to comply with these requirements, and if another qualified bidder whose bid is within five percent of the successful bid has agreed to stipulate to these conditions, the contracting entity shall refer the bids to the administrator of the General Services Administration. The administrator, in turn, may determine that it is in the best interest of the State that the contract be awarded to the other bidder.

If a contracting agency finds that a party to a State contract who has agreed to the stipulated conditions is not in compliance with those conditions, the agency shall take such appropriate action as may be provided by law, rule or contract, including the imposition of sanctions or the recovery of damages.

The MacBride principles establish standards for corporate activity with respect to the recruitment, hiring, assignment, training and promotion of minority employees and the maintenance of workplace conditions. A 1987 statute (N.J.S.A.52:18A-89.5) requiring the Director of the Division of Investment to investigate compliance with the principles by corporations in which State pension fund assets are invested and which do business in Northern Ireland sets forth the principles as follows:

- a. Increasing the representation of individuals from underrepresented religious groups in the workforce, including managerial, supervisory, administrative, clerical and technical jobs;
- b. Adequate security for the protection of minority employees both at the workplace and while traveling to and from work;
- c. The banning of provocative religious or political emblems from the workplace;
- d. All job openings should be publicly advertised and special recruitment efforts should be made to attract applicants from underrepresented religious groups;
- e. Layoff, recall and termination procedures should not in practice favor particular religious groups;
- f. The abolition of job reservations, apprenticeship restrictions and differential employment criteria, which discriminate on the basis of religion or ethnic origin;
- g. The development of training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs

to train, upgrade and improve the skills of minority employees;

h. The establishment of procedures to assess, identify and actively recruit minority employees with potential for further advancement;

i. The appointment of a senior management staff member to oversee the company's affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 331

STATE OF NEW JERSEY

DATED: FEBRUARY 24, 1994

The Senate State Government Committee reports favorably Senate, No. 331.

This bill would require the successful bidder on a State contract to agree to have no business operations in Northern Ireland or to conduct any operations the bidder has in that country in accordance with the MacBride principles. These principles establish standards for corporate activity with respect to the recruitment, hiring, assignment, training and promotion of minority employees and the maintenance of workplace conditions.

The bill provides that if a successful bidder refuses to comply with these requirements, the contract may instead be awarded to the next qualified bidder who has agreed to stipulate to these conditions and whose bid is within five percent of the successful bid. A party to a State contract who agrees to these conditions and is, thereafter, found not to be in compliance would be subject to sanctions.

This bill was prefiled for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE BILL NO. 331

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Bill No. 331 with my recommendations for reconsideration.

A. Summary of Bill

This bill would require the successful bidder on a State contract to agree to have no business operations in Northern Ireland or to conduct any operations the bidder has in that British province in accordance with the MacBride Principles. These principles establish standards for corporate activity with respect to recruiting, hiring, assigning, training and promoting employees and maintaining antidiscriminatory workplace conditions.

The bill provides that if a successful bidder refuses either not to have business operations in Northern Ireland or to comply with the MacBride Principles, the State may instead award the contract to the next qualified bidder who has agreed to stipulate to these conditions and whose bid is within five percent of the successful bid. A party to a State contract who agrees to these conditions and is, thereafter, found not to be in compliance would be subject to certain penalties.

B. Recommended Action

The hopes and goals embodied in this legislation cannot be denied: peace in Northern Ireland. I stand together with the bill's sponsors and supporters to say discrimination of any kind, whether it is based on religion or race or political belief, cannot be tolerated and will not be supported.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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As this bill comes to me, the prospects for peace in Northern Ireland are rising higher than ever. The warring factions in Northern Ireland, locked in a deadly struggle for over 25 years, have declared a cease fire. They are newly committed to solving their differences through diplomacy and dialogue rather than by belligerence and bullets.

Even before these momentous events, the United Kingdom took steps to eradicate employment discrimination in Northern Ireland through the Fair Employment (Northern Ireland) Act of 1989. Among other provisions, this law requires most firms to monitor the composition of their workforces annually and to take affirmative action to ensure fair participation in their workforces by Catholics and Protestants. Accordingly, I am recommending that the bill be amended so that in addition to the MacBride Principles, it also references the United Kingdom's Fair Employment (Northern Ireland) Act of 1989. In that way, New Jersey can send a strong signal that we wish to do business only with those firms in Northern Ireland that provide equal opportunities under the law.

Finally, Senate Bill No. 331 has some technical errors relating to the State's contract laws. The statutory authorization and duties of the Director of the Division of Purchase and Property, the Director of the Division of Building and Construction and the administrator of the General Services Administration need to be clarified.

Accordingly, I herewith return Senate Bill No. 331 and recommend that it be amended as follows:

- Page 1, Title, Line 3: After "employment" insert "and the United Kingdom's Fair Employment (Northern Ireland) Act of 1989,"
- Page 1, Title, Line 4: After "seq.)" insert "and P.L.1968, c.108 (C.52:32-2)"

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EXECUTIVE DEPARTMENT

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- Page 1, Section 1, Line 14: Delete "the" and insert "any"
- Page 1, Section 1, Line 16: After "(C.52:34-12)" insert "or selected pursuant to section 1 of P.L.1968, c. 108 (C.52:32-2)"; delete "agree to" and insert "certify that"
- Page 1, Section 1, Line 17: After "1)" insert "they"
- Page 1, Section 1, Line 18: After "2)" insert "they will"
- Page 1, Section 1, Line 21: After "(C.52:18A-89.5)" insert ", and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989,"
- Page 1, Section 1,
Lines 30-31: Delete "administrator of the General Services Administration" and insert "Director of the Division of Purchase and Property or the Director of the Division of Building and Construction, as the case may be,"
- Page 2, Section 1, Line 5: After "business" insert "operations"
- Page 2, Section 1, Line 6: Delete "that country" and insert "Northern Ireland"

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ Margaret M. Foti

Chief Counsel to the Governor



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
Contact: RITA MANNO
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TRENTON, N.J. 08625
Release: TUESDAY
JUNE 27, 1995

Gov. Christie Whitman signed legislation that requires successful bidders on State contracts to agree to conduct any business they may have in Northern Ireland according to the MacBride Principles.

The MacBride Principles promote anti-discrimination in the workplace and establish standards for the recruitment, hiring, assignment, training and promotion of employees.

Sponsor of S-331 is Sen. Henry McNamara (R-Bergen).

The Governor had recommended changes to the bill in her conditional veto statement on March 30. The bill was amended by the Legislature, reflecting those changes.

In the amended bill signed yesterday, a successful bidder who refuses to comply with the MacBride Principles or the Fair Employment Act of 1989 will be disqualified from the state award, which will be given to the next qualified bidder.

The Governor also signed the following:

A-2588, which broadens the categories of employees from which counties and municipalities may choose to assume the full cost of health benefits after the employees' retirement. Sponsors are Assemblymen Alan Augustine and Richard Bagger, both Republicans from Union County.

A-1629, which changes the name of the Violent Crimes Compensation Board to the Victims of Crimes Compensation Board and makes the services of the board available to victims of various crimes, including but not limited to violent crimes. Sponsors are Assemblymen Monroe Lustbader (R-Essex) and Leonard Lance (R-Hunterdon).

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